

(h) The sale, purchase, or trade of, or the offer to sell, purchase, or trade, by a registered blood establishment that qualifies as a health care entity any:

(1) Drug indicated for a bleeding or clotting disorder, or anemia;

(2) Blood collection container approved under section 505 of the act; or

(3) Drug that is a blood derivative (or a recombinant or synthetic form of a blood derivative); as long as all of the health care services that the establishment provides are related to its activities as a registered blood establishment or the health care services consist of collecting, processing, storing, or administering human hematopoietic stem/progenitor cells or performing diagnostic testing of specimens provided that these specimens are tested together with specimens undergoing routine donor testing. Blood establishments relying on the exclusion in this paragraph must satisfy all other requirements of the act and this part applicable to a wholesale distributor or retail pharmacy.

(i) The sale, purchase, or trade of, or the offer to sell, purchase, or trade, by a comprehensive hemophilia diagnostic treatment center that is receiving a grant under section 501(a)(2) of the Social Security Act and that qualifies as a health care entity, any drug indicated for a bleeding or clotting disorder, or anemia, or any drug that is a blood derivative (or a recombinant or synthetic form of a blood derivative). Comprehensive hemophilia diagnostic treatment centers relying on the exclusion in this paragraph must satisfy all other requirements of the act and this part applicable to a wholesale distributor or retail pharmacy.

#### **PART 205—GUIDELINES FOR STATE LICENSING OF WHOLESALE PRESCRIPTION DRUG DISTRIBUTORS**

■ 4. The authority citation for 21 CFR part 205 continues to read as follows:

**Authority:** 21 U.S.C. 351, 352, 353, 371, 374.

■ 5. Section 205.3 is amended by revising paragraph (h) to read as follows:

#### **§ 205.3 Definitions.**

\* \* \* \* \*

(h) *Health care entity* means any person that provides diagnostic, medical, surgical, or dental treatment, or chronic or rehabilitative care, but does not include any retail pharmacy or any wholesale distributor. Except as provided in § 203.22(h) and (i) of this chapter, a person cannot simultaneously

be a “health care entity” and a retail pharmacy or wholesale distributor.

Dated: October 3, 2008.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E8–24050 Filed 10–8–08; 8:45 am]

**BILLING CODE 4160–01–S**

## **DEPARTMENT OF THE TREASURY**

### **Internal Revenue Service**

#### **26 CFR Part 1**

[TD 8073]

#### **Income, Excise, and Estate and Gift Taxes; Effective Dates and Other Issues Arising Under the Employee Benefit Provisions of the Tax Reform Act of 1984; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a correction to temporary regulations (TD 8073) that were published in the **Federal Register** on Tuesday, February 4, 1986 (51 FR 4312) relating to effective dates and certain other issues arising under sections 91, 223, and 511–561 of the Tax Reform Act of 1984. This action is necessary because of changes to the applicable tax law made by the Tax Reform Act of 1984. The temporary regulations will affect qualified employee benefit plans, welfare benefit funds and employees receiving benefits through such plans.

**DATES:** This correction is effective October 9, 2008, and is applicable after December 31, 1985.

**FOR FURTHER INFORMATION CONTACT:** Melissa A. D’Ambrose, (202) 622–6080 (not a toll-free number).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The temporary regulations that are the subject of this document are under sections 72, 79, 125, 133, 402, 404, 419, 461, 463, 505, 512, and 1042 of the Internal Revenue Code.

##### **Need for Correction**

As published, temporary regulations (TD 8073) contain an error that may prove to be misleading and is in need of clarification.

##### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

## **Correction of Publication**

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

### **PART 1—INCOME TAXES**

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 1.512(a)–5T A–3: (b) is amended by revising the second sentence to read as follows:

**§ 1.512(a)–5T Questions and answers relating to the unrelated business taxable income of organizations described in paragraphs (9), (17) or (20) of section 501(c) (temporary).**

\* \* \* \* \*

A–3: \* \* \*

(b) \* \* \* For purposes of section 512(a)(3)(B), member contributions include both employee contributions and employer contributions to the VEBA, SUB, or GLSO.

\* \* \* \* \*

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. E8–23917 Filed 10–8–08; 8:45 am]

**BILLING CODE 4830–01–P**

## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

[DOD–2007–OS–0025]

RIN 0790–AI08

#### **32 CFR Part 112**

#### **Indebtedness of Military Personnel**

**AGENCY:** Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This part contains uniform Department of Defense policies for indebtedness of military personnel. This updated rule contains editorial changes only as required for internal Department of Defense mandated reconsideration every five years.

**DATES:** *Effective Date:* This rule is effective November 10, 2008.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Colonel Tom Williams, Office of the Deputy Under Secretary of Defense for Program Integration, 4000 Defense Pentagon, Washington, DC 20301–4000.

**SUPPLEMENTARY INFORMATION:** The proposed rule was published on April 17, 2007 at 72 FR 19136. One editorial

comment was received and accepted. The rule is therefore adopted as published below.

#### Executive Order 12866, "Regulatory Planning and Review"

It has been determined that 32 CFR part 112 is not a significant regulatory action. The rule does not:

1. Have an annual effect to the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

#### Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104-4)

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

#### Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

#### Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that this rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

#### Executive Order 13132, "Federalism"

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

1. The States;  
2. The relationship between the National Government and the States; or  
3. The distribution of power and responsibilities among the various levels of government.

#### List of Subjects in 32 CFR Part 112

Claims, Credit, Military personnel.

■ Accordingly, 32 CFR Part 112 is revised as follows:

### PART 112—INDEBTNESS OF MILITARY PERSONNEL

Sec.

- 112.1 Purpose.
- 112.2 Applicability and Scope.
- 112.3 Definitions.
- 112.4 Policy.
- 112.5 Processing of Debt Complaints.
- 112.6 Processing of Involuntary Allotments.
- 112.7 Responsibilities.

**Authority:** 5 U.S.C. 5520a(k) and 10 U.S.C. 113(d).

#### § 112.1 Purpose.

This part:

(a) Updates DoD policies and assigns responsibilities governing delinquent indebtedness of members of the Military Services and prescribes policy for processing involuntary allotments from the pay of military members to satisfy judgment indebtedness in accordance with 5 U.S.C. 5520a(k).

(b) Establishes responsibility for procedures implementing 5 U.S.C. 5520a(k), 15 U.S.C. 1601 note, 1601-1614, 1631-1646, 1661-1665a, 1666-1666j, and 1667-1667e ("Truth in Lending Act"), and 15 U.S.C. 1601 note, and 1692-1692o ("Fair Debt Collection Practices Act").

#### § 112.2 Applicability and Scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is not operating as a Service in the Navy, under agreement with the Department of Homeland Security), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").

(b) This part does not apply to:

(1) Indebtedness of a member of the Military Services to the Federal Government.

(2) Processing of indebtedness claims to enforce judgments against military members for alimony or child support.

(3) Claims by State or municipal governments under the processing guidelines for complaints, including tax collection actions.

#### § 112.3 Definitions.

(a) *Absence.* A member's lack of an "appearance," at any stage of the judicial process, as evidenced by failing to physically attend court proceedings; failing to be represented at court

proceedings by counsel of the member's choosing; or failing to timely respond to pleadings, orders, or motions.

(b) *Court.* A court of competent jurisdiction within any State, territory, or possession of the United States.

(c) *Debt Collector.* An agency or agent engaged in the collection of debts described under 15 U.S.C. 1601 note and 1692-1692o ("Fair Debt Collection Practices Act").

(d) *Exigencies of Military Duty.* A military assignment or mission-essential duty that, because of its urgency, importance, duration, location, or isolation, necessitates the absence of a member of the Military Services from appearance at a judicial proceeding or prevents the member from being able to respond to a notice of application for an involuntary allotment. Exigency of military duty is normally presumed during periods of war, national emergency, or when the member is deployed.

(e) *Judgment.* A final judgment must be a valid, enforceable order or decree, by a court from which no appeal may be taken, or from which no appeal has been taken within the time allowed, or from which an appeal has been taken and finally decided. The judgment must award a sum certain amount and specify that the amount is to be paid by an individual who, at the time of application for the involuntary allotment, is a member of the Military Services.

(f) *Just Financial Obligation.* A legal debt acknowledged by the military member in which there is no reasonable dispute as to the facts or the law; or one reduced to judgment that conforms to Sections 501-591 of title 50 Appendix, United States Code (The Servicemembers Civil Relief Act, as amended), if applicable.

(g) *Member of the Military Services.* For the purposes of this part, any member of the Regular Army, Air Force, Navy, Marine Corps, or Coast Guard, and any member of a Reserve component of the Army, Air Force, Navy, Marine Corps, or Coast Guard (including the Army National Guard of the United States and the Air National Guard of the United States) on active duty pursuant to a call or order for a period in excess of 180 days at the time an application for involuntary allotment is received by the Director, DFAS, or Commanding Officer, Coast Guard Pay and Personnel Center. The following shall not be considered members:

(1) Retired personnel, including those placed on the temporary or permanent disabled retired list; and

(2) Personnel in a prisoner of war or missing in action status, as determined

by the Secretary of the Military Department concerned.

#### **§ 112.4 Policy.**

(a) Members of the Military Services are expected to pay their just financial obligations in a proper and timely manner. A Service member's failure to pay a just financial obligation may result in disciplinary action under the Uniform Code of Military Justice (10 U.S.C. 801–940) or a claim pursuant to Article 139 of the Uniform Code of Military Justice. Except as stated in this section, and in paragraphs (a)(1) and (a)(2) of this section, the DoD Components have no legal authority to require members to pay a private debt or to divert any part of their pay for satisfaction of a private debt.

(1) Legal process instituted in civil courts to enforce judgments against military personnel for the payment of alimony or child support shall be acted on pursuant to 42 U.S.C. 651–665, and Chapter 50, of Department of Defense Regulation 7000.14–R Volume 7A.<sup>1</sup>

(2) Involuntary allotments under 5 U.S.C. 5520a(k) shall be established in accordance with this part.

(b) Whenever possible, indebtedness disputes should be resolved through amicable means. Claimants may contact military members by having correspondence forwarded through the military locator services for an appropriate fee.

#### **§ 112.5 Processing of Debt Complaints.**

(a) Debt complaints meeting the requirements of this part and procedures established by the Under Secretary of Defense for Personnel and Readiness, as required by § 112.7(a)(1) shall receive prompt processing assistance from commanders.

(b) Assistance in indebtedness matters shall not be extended to those creditors:

(1) Who have not made a bona fide effort to collect the debt directly from the military member;

(2) Whose claims are patently false and misleading; or

(3) Whose claims are obviously exorbitant.

(c) Some States have enacted laws prohibiting creditors from contacting a debtor's employer about indebtedness or communicating facts on indebtedness to an employer unless certain conditions are met. The conditions that must be met to remove this prohibition are generally such things as reduction of a debt to judgment or obtaining written permission of the debtor.

(1) At DoD installations in States having such laws, the processing of debt

complaints shall not be extended to those creditors who are in violation of the State law. Commanders may advise creditors that this rule has been established because it is the general policy of the Military Services to comply with State law when that law does not infringe upon significant military interests.

(2) The rule in paragraph (c)(1) of this section shall govern even though a creditor is not licensed to do business in the State where the debtor is located. A similar practice shall be started in any State enacting a similar law regarding debt collection.

(3) Pursuant to 15 U.S.C. 1601 note and 1692–1692o (“Fair Debt Collection Practices Act”), contact by a debt collector with third parties, such as commanding officers, for aiding debt collection is prohibited without a court order or the debtor's prior consent given directly to the debt collector. Creditors are generally exempt from this requirement, but only when they collect on their own behalf.

#### **§ 112.6 Processing of Involuntary Allotments.**

Pursuant to 5 U.S.C. 5520a(k): (a) In those cases in which the indebtedness of a military member has been reduced to a judgment, an application for an involuntary allotment from the member's pay may be made under procedures prescribed by the Under Secretary of Defense (Comptroller). Such procedures shall provide the exclusive remedy available.

(b) An involuntary allotment from a member's pay shall not be permitted in any indebtedness case in which:

(1) Exigencies of military duty caused the absence of the member from the judicial proceeding at which the judgment was rendered; or

(2) There has not been compliance with the procedural requirements of the Servicemembers Civil Relief Act 50, U.S.C. Appendix, sections 501–591.

#### **§ 112.7 Responsibilities.**

(a) The Under Secretary of Defense for Personnel and Readiness shall:

(1) In consultation with the Under Secretary of Defense (Comptroller), establish procedures for the processing of debt complaints.

(2) Have policy oversight on the assistance to be provided by military authorities to creditors of military personnel who have legitimate debt complaints.

(b) The Under Secretary of Defense (Comptroller) shall:

(1) In consultation with the Under Secretary of Defense for Personnel and Readiness establish procedures for

processing debt complaints, and administer and process involuntary allotments from the pay of members of the Military Services. This includes the authority to promulgate forms necessary for the efficient administration and processing of involuntary allotments.

(2) Ensure that the Director, Defense Finance and Accounting Service:

(i) Implements procedures established by the Under Secretary of Defense for Personnel and Readiness and the Under Secretary of Defense (Comptroller).

(ii) Considers whether Servicemembers Civil Relief Act 50 U.S.C. Appendix, sections 501–591 has been complied with pursuant to 5 U.S.C. 5520a(k) prior to establishing an involuntary allotment against the pay of a member of the Military Services.

(iii) Publishes, prints, stocks, redistributes, and revises DoD forms necessary to process involuntary allotments.

(c) The Heads of the DoD Components shall urge military personnel to meet their just financial obligations, since failure to do so damages their credit reputation and affects the public image of all DoD personnel. See DoD Directive 5500.7.<sup>2</sup>

(d) The Secretaries of the Military Departments shall:

(1) Establish, as necessary, procedures to administer and process involuntary allotments from the pay of members of the Military Services. This includes designating those commanders, or other officials who may act in the absence of the commander, who shall be responsible for determining whether a member's absence from a judicial proceeding was caused by exigencies of military duty, and establishing appeal procedures regarding such determinations.

(2) Require commanders to counsel members to pay their just debts, including complying, as appropriate, with court orders and judgments for the payments of alimony or child support.

(3) Emphasize prompt command action to assist with the processing of involuntary allotment applications.

(e) The Chief, Office of Personnel and Training, for the Coast Guard shall:

(1) Establish, as necessary, procedures supplemental to those promulgated by the Under Secretary of Defense for Personnel and Readiness or the Under Secretary of Defense (Comptroller) to administer and process involuntary allotment from the pay of members of the Military Services; this includes the authority to promulgate forms necessary for the efficient administration and processing of involuntary allotments.

<sup>1</sup> Copies may be obtained from the DoD Directives Web page at: <http://www.dtic.mil/whs/directives>.

<sup>2</sup> See footnote 1 to § 112.4(a)(1).

(2) Ensure that the Commanding Officer, Coast Guard Pay and Personnel Center:

(i) Implements procedures established by the Under Secretary of Defense for Personnel and Readiness, the Under Secretary of Defense (Comptroller), and Chief, Office of Personnel and Training.

(ii) Considers whether the Servicemembers Civil Relief Act, as amended (50 U.S.C. Appendix, sections 501–591) has been complied with pursuant to 5 U.S.C. 5520a(k) prior to establishing an involuntary allotment against the pay of a member of the Military Services.

(iii) Acts as the Coast Guard manager for forms necessary to process involuntary allotments.

Dated: September 30, 2008.

**Patricia L. Toppings,**

*OSD Federal Register Liaison Officer,  
Department of Defense.*

[FR Doc. E8–23977 Filed 10–8–08; 8:45 am]

BILLING CODE 5001–06–P

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 199**

[DoD–2008–HA–0035]

RIN 0720–AA69

**Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Voluntary Disenrollment From the TRICARE Retiree Dental Program (TRDP)**

**AGENCY:** Office of the Secretary, Department of Defense.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements section 726 of the Floyd D. Spence National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2001, which amended 10 U.S.C. 1076c to allow for voluntary disenrollment from the TRICARE Retiree Dental Program (TRDP) in certain circumstances.

**DATES:** *Effective Date:* This rule is effective November 10, 2008.

**FOR FURTHER INFORMATION CONTACT:** Colonel Gary Martin, TMA, TRICARE Policy and Operations, telephone (703) 681–0039.

**SUPPLEMENTARY INFORMATION:**

**I. Summary of Final Rule Provisions**

Section 726 of the Floyd D. Spence NDAA for FY 2001 (Pub. L. 106–398), amended 10 U.S.C. 1076c by directing the Department to allow an enrollee to the TRDP to disenroll at the beginning

of the prescribed enrollment period and to permit disenrollment thereafter under limited circumstances providing that the fiscal integrity of the dental program is not jeopardized. The amendment specifies the inclusion of the following circumstances: a period of up to 30 days at the beginning of the prescribed minimum enrollment period during which an enrollee may disenroll; assignment of Federal employment outside dental plan jurisdiction that prevents utilization of the plan’s benefits; a serious medical condition that prevents utilization of the plan’s benefits; and, severe financial hardship. The final rule expands the voluntary termination provision of the TRDP provided by the Department and originally contained in a final rule published in the **Federal Register** on January 30, 2002 (67 FR 4353). Under the statutory mandate for voluntary enrollment required by section 704 of the NDAA for FY 2000 (Pub. L. 106–65), that provision implemented a grace period in which a new enrollee could voluntarily disenroll during the first 30 days following the beginning date of coverage on the condition that no benefits had been used and, effectively, nullify the enrollment. It also designated the TRDP contractor as the authority for grace period disenrollment decisions.

This final rule provides another opportunity for voluntary disenrollment from the TRDP during the enrollment lock-in period that could occur upon an enrollee’s request without any penalty and is based on the extenuating circumstances specified in the Floyd D. Spence NDAA for FY 2001. The TRDP contractor continues as the authority for voluntary disenrollment decisions but only at the initial level. The final rule allows a process for enrollees to appeal to the TMA all adverse decisions made by the contractor in response to requests for voluntary disenrollment.

The final rule also makes administrative corrections.

**II. Review of Public Comments**

We published the proposed rule on January 30, 2002 (67 FR 4375) and provided a 60-day comment period. We received no public comments.

**III. Regulating Procedures**

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of \$100 million or more on the national economy or which would have other substantial impacts. The Regulatory Flexibility Act (RFA)

requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule is not an economically significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA, thus this final rule is not subject to any of these requirements.

This rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (Title 44, U.S.C., 3501–3511).

We have examined the impact(s) of the final rule under Executive Order 13132 and it does not have policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, therefore, consultation with State and local officials is not required.

**List of Subjects in 32 CFR Part 199**

Claims, Dental health, Health insurance, Individuals with disabilities, Military personnel.

■ Accordingly, 32 CFR part 199 is amended as follows:

**PART 199—[AMENDED]**

■ 1. The authority citation for 32 CFR part 199 continues to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.22 is amended by revising paragraph (b)(4); the first two sentences of paragraph (d)(1)(iv) introductory text; and paragraphs (d)(4)(ii), (d)(5)(ii), (e)(2) and (k) to read as follows:

**§ 199.22 TRICARE Retiree Dental Program (TRDP).**

\* \* \* \* \*

(b) \* \* \*

(4) Except as otherwise provided in this section or by the Assistant Secretary of Defense (Health Affairs) or designee, the TRDP is administered in a manner similar to the TRICARE Dental Program under § 199.13 of this part.

\* \* \* \* \*